

**ORIGINAL**

DURIE TANGRI LLP  
DARALYN J. DURIE--#169825  
ddurie@durietangri.com  
MICHAEL H. PAGE--#154913  
mpage@durietangri.com  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: (415) 362-6666  
Facsimile: (415) 236-6300

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2010 FEB -8 P 1:31

RICHARD W. WIEKING  
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N.D. OF SAN JOSE

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PixArt Imaging Inc.,

Plaintiff,

vs.

Avago Technologies General IP (Singapore)  
Pte. Ltd., Inc., Avago Technologies ECU IP  
(Singapore) Pte. Ltd., Inc., and Avago  
Technologies USA, Inc.,

Defendant.

**C10-00544**

Case No.

**HRL**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

**DEMAND FOR JURY TRIAL**

PixArt Imaging Inc. ("PixArt") for its complaint against Avago Technologies General IP (Singapore) Pte. Ltd., Inc., Avago Technologies ECU IP (Singapore) Pte. Ltd., Inc, and Avago Technologies USA, Inc. (collectively "Avago") alleges as follows:

**PARTIES**

1  
2 1. Plaintiff PixArt is a Taiwanese corporation with its principal place of business in  
3 Hsin-Chu, Taiwan, Republic of China. PixArt designs, develops and markets CMOS image  
4 sensors. Using proprietary CMOS image sensing technology, PixArt designs, develops and  
5 markets low-cost, high-quality CMOS image sensors that have a small die size and low power  
6 requirements. PixArt products are used in a wide variety of applications that require image  
7 capture technology, such as digital cameras, digital camcorders, video conferencing systems,  
8 security systems, and optical mice (mice that detect relative motion optically instead of  
9 mechanically). PixArt's product line includes low-cost, CMOS-process optical navigation  
10 sensors, suitable for use as motion sensors in optical mice and optical trackballs.

11 2. Defendants Avago Technologies General IP (Singapore) Pte. Ltd., Inc. and Avago  
12 Technologies ECBU IP (Singapore) Pte. Ltd., Inc. are Singaporean companies with their  
13 principal place of business in Singapore. Defendant Avago Technologies USA Inc. is a  
14 Delaware corporation with its principal place of business in San Jose, CA. Avago is the holder  
15 of various United States Patents drawn to technologies for optical mice, trackballs, and pseudo-  
16 trackballs, including U.S. Patent No. 6,433,780 (the "'780 patent"), entitled "Seeing Eye Mouse  
17 for a Computer System", U.S. Patent No. 5,686,720 (the "'720 patent"), entitled "Method and  
18 Device for Achieving High Contrast Surface Illumination," and U.S. Patent No. 5,786,804 (the  
19 "'804 patent"), entitled "Method and System for Tracking Attitude," each of which it asserted  
20 against PixArt in prior litigation in this Court.

**JURISDICTION**

21  
22 3. Pursuant to 28 U.S.C. § 1338(a), jurisdiction is proper in this Court because this  
23 action arises under an Act or Acts of Congress relating to patents. Pursuant to 28 U.S.C. § 1332,  
24 jurisdiction is proper in this Court because this action is between citizens of a state and citizens  
25 or subjects of a foreign state where the amount in controversy exceeds the jurisdictional  
26 minimum.  
27  
28

**VENUE**

4. Venue is proper in this district is proper pursuant to the venue selection provisions in the Patent License Agreement ("the Agreement") in this action, which Agreement, was entered into pursuant to the settlement of prior litigation in this district (N.D. Cal. Case No. C03-4871 JW) (the "Prior Litigation"). Venue in this district is also proper pursuant to 28 U.S.C. § 1391(b)(2) because, on information and belief, a substantial part of the events or omissions giving rise to PixArt's claims occurred in this judicial district, and because Defendant Avago Technologies, Inc. has its principal place of business in this district.

**INTRA-DISTRICT ASSIGNMENT**

5. Pursuant to the contract at issue herein, and because this case is related to and arises out of the Prior Litigation between the same parties before Judge Ware, this matter is properly assigned to the San Jose district. Because this action is an intellectual property action, it is properly assigned to any of the divisions in the district.

**GENERAL ALLEGATIONS**

6. In October, 2003, PixArt filed the Prior Litigation (then styled PixArt v. Agilent) in this Court, seeking a declaration that it did not infringe the '780 patent, which at the time was owned by Agilent Technologies, Inc.

7. Agilent counterclaimed, asserting infringement of the '780, '720, and '804 patents. Avago thereafter acquired Agilent's interest in those patents, and substituted into the Prior Litigation in Agilent's place.

8. On July 13, 2006, Avago and PixArt settled the Prior Litigation, and entered into a Patent License Agreement ("the Agreement"). That Agreement included cross-licenses to any then-issued or then-pending patents covering parts for optical trackballs or optical mice.

9. PixArt has been timely and regularly paying royalties to Avago under the Agreement, and has performed all of its obligations under the Agreement.

10. Optical mice and optical trackballs control the motion of computer cursors by

1 bouncing either LED or laser light off of a surface, and detecting motion by analyzing that  
2 reflected light. Optical mice typically place the light source and sensor in the mouse, and bounce  
3 the light off of the surface upon which the mouse moves. Optical trackballs typically bounce the  
4 light off a captive ball, and respond to movement of that ball. Well-known examples of optical  
5 trackballs include popular personal computer trackballs such as the Microsoft Trackball Optical.

6 11. Since the Agreement was executed, Avago, PixArt, and others have continued to  
7 develop improvements on optical navigation devices. One of those developments is known as a  
8 “pseudo trackball,” “optical joystick,” or “optical finger mouse.” Although a pseudo trackball  
9 looks and acts like a typical trackball, the “ball” does not revolve. Instead, it is a fixed  
10 transparent or semi-transparent dome. LED or laser light is directed through or along that dome,  
11 and the sensor analyzes the reflection of the light off of the user’s finger. In other versions, an  
12 “optical finger mouse” tracks the movement of a finger, which acts as mouse on a small  
13 mousepad. Some newer versions of Samsung mobile phones, such as the i780 (Epix) and i900  
14 (Omnia), now use optical mice or optical joysticks in place of moving trackballs.

15 12. Pursuant to the Agreement, Avago Technologies ECU IP executed another  
16 Patent License Agreement with PixArt in Taiwan on October 19, 2006, specifically licensing to  
17 PixArt the Taiwanese counterparts to Avago’s U.S. Patents. On November 23, 2007, Avago  
18 registered that license, listing all of its existing Taiwanese patents related to optical mice and  
19 optical trackballs, with the Taiwan Intellectual Property Office. That license and registration  
20 expressly listed and included the Taiwanese counterparts to two U.S. Patents drawn to pseudo  
21 trackball devices: U.S. Patent No. 6,677,929, entitled “Optical Pseudo Trackball Controls the  
22 Operation of an Appliance or Machine,” and U.S. Patent 6,057,450, entitled “Mouseless Optical  
23 and Position Translation Type Screen Pointer.” On information and belief, those two patents  
24 were Avago’s only patents drawn to pseudo trackball technology at the time of the registration.

25 13. On October 9, 2009, Avago wrote to PixArt, informing PixArt that it had made  
26 “significant additions to its patent portfolio” for pseudo trackballs, which it refers to as “optical  
27 finger navigation,” or “OFN,” and offering to discuss licensing those patents. In response,  
28

1 PixArt stated its understanding that the Agreement already covered such products, and cited  
2 Avago's own registration with the Taiwan Patent Office as evidence of the parties' mutual  
3 understanding. On December 10, 2009, Avago responded by denying that pseudo trackballs  
4 were encompassed by the Agreement, demanding that PixArt not tell its customers that it was  
5 licensed, and threatening suit if PixArt did not comply. Repeated subsequent attempts to  
6 negotiate the dispute have been ignored by Avago.

7 14. PixArt has designed, and has a present intent and desire to offer for sale in the  
8 United States, parts for use in pseudo trackballs. Although PixArt does not believe its products  
9 infringe any of Avago's patents, Avago has threatened suit, and PixArt's customers are unwilling  
10 to incorporate PixArt's parts into their own products unless PixArt can assure them that such use  
11 is licensed. Avago, however, has threatened to immediately "issue a termination notice" of the  
12 Agreement if PixArt provides such assurances to its customers. As a result, Avago's threats  
13 have had a severe and immediate impact on PixArt's business.

14  
15 **FIRST CAUSE OF ACTION**  
16 **(Declaratory Judgment)**

17 15. PixArt incorporates by reference the allegations set forth in paragraphs 1 through  
18 12 as though fully set forth herein.

19 16. Based on Avago's assertions, PixArt's past and current conduct, and PixArt's  
20 future plans, all as described above, an actual, present, and justiciable controversy has arisen  
21 between PixArt and Avago concerning the scope of the Agreement, and specifically whether  
22 navigation sensors suitable for use as motion sensors in pseudo trackballs are encompassed  
23 within the Agreement's cross-licenses.

24 17. PixArt's navigation sensors suitable for use as motion sensors in pseudo  
25 trackballs are licensed under the terms of the Agreement.

26 18. A judicial declaration that PixArt's pseudo trackball products are licensed under  
27 the terms of the Agreement is necessary and appropriate at this time so that PixArt can ascertain  
28 its rights and duties with respect to designing, developing and marketing navigation sensors

1 suitable for use as motion sensors in pseudo trackballs.

2  
3 **PRAYER FOR RELIEF**

4 Wherefore, PixArt prays for judgment as follows:

- 5 a. That the Court enter a judgment declaring that PixArt's navigation sensors  
6 suitable for use as motion sensors in pseudo trackballs are licensed under the  
7 terms of the Agreement, and  
8 b. That the Court award PixArt such other and further relief as it deems just and proper.

9  
10 Dated: February 8th, 2010

DURIE TANGRI LLP

11  
12  
13 By: 

14 Michael H. Page  
15 Attorneys for Plaintiff  
16 PixArt Imaging Inc.  
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**DEMAND FOR JURY TRAIL**

Pursuant to Federal Rule of Civil Procedure 38 and Civil Local Rule 3-6, PixArt hereby  
demands a jury trial on all issues so triable.

Dated: February 8th, 2010

DURIE TANGRI LLP

By: 

Michael H. Page  
Attorneys for Plaintiff  
PixArt Imaging Inc.